From My Perspective...

Reality Is More Exciting Than Fiction

Brian Cutler, PhD

Many of us are fascinated with crime, criminal investigations, court proceedings, and justice in general. You can’t flip through the cable channels, browse news on the web, review what’s playing in theaters, or peruse the best-sellers at the bookstore without seeing fictional accounts about high-stakes crime; intelligent, technologically advanced, and sometimes corrupt criminal investigations; dramatic lawyering; and suspenseful outcomes. We no doubt find all of this exciting and entertaining, and it helps us momentarily escape from and cope with the stress and monotony of our day-to-day lives.

My interest in crime and justice fiction has all but disappeared. How can this be? Have I damaged the part of my brain that should light up when faced with intrigue, suspense, extreme antisocial behavior, conspiracy, and heroism? Fortunately, the answer is no. I get all I need from research and practice in psychology and law, and more broadly, forensic psychology.

I became involved in psychology and law research in 1983. My excitement grew from some readings in the graduate courses I was taking, discussions with my professors who had forensic psychology interests (Drs. Kenneth Kallio and Paul Olczak), and a fascinating edited volume titled *Psychology of the Courtroom* (edited by Norbert Kerr and Robert Bray, 1982, Academic Press). I found my passion and have been engaged in research, teaching, and practice since that time 30 years ago! Since the 1980s, we have learned that eyewitness identifications in criminal investigations are often incorrect, that cognitive and social psychological factors associated with viewing a crime and attempting an identification systematically influence the accuracy of eyewitness identification, that psychology can be used to develop methods of reducing the risk of false identification, that the justice procedures designed to prevent mistaken identifications from becoming wrongful convictions are far from foolproof, and that mistaken eyewitness identification is one of the leading causes of documented cases of conviction of the innocent.

My research on eyewitness identification has led to some fascinating practice opportunities, including serving as a consultant and expert witness in over 100 cases. I have been involved in low- and high-profile cases, criminal and civil cases, and appellate cases in both the United States and Canada. Most recently, I testified in a post-conviction hearing on behalf of the North Carolina Innocence Project. In that case, the hearing concerned Charles Ray Finch, who was convicted of murder in February of 1976, after he was identified from a highly suggestive lineup by an eyewitness to the shooting. Mr. Finch has spent more than 35 years in prison and is believed by the staff from the North Carolina Innocence Project to be innocent.

When I get involved in a case, I am usually retained by a defense attorney, most often a public defender. The attorney sends me police reports, witness statements, copies of photo arrays, transcripts of hearings, and any other information pertaining to the conditions under which the crime occurred and how a lineup was conducted. I review these materials and take notes about how research informs us of how factors associated with the crime or the lineup may have influenced the eyewitness’s identification. Were the eyewitness and the perpetrator of the same or different races? Was the crime highly stressful for the witness? Was there a weapon present that might have caused a “weapon focus” effect? Was the lineup suggestive in some way? Did the investigator caution the eyewitness that the perpetrator might not be present in the live lineup or photo array? What other photos were included with the suspect’s and do they in any way make the suspect’s photo stand out? Did the investigator have the opportunity to guide the eyewitness’s selection? Was there anything that happened after the lineup that may have artificially inflated the eyewitness’s confidence in his or her identification after the fact?

Once I gather all of the case information and relevant research, I confer with the attorney by explaining my findings in a conversation and sometimes in a written report. The attorney may then ask me to testify at the trial and educate the jury so that the jury can make a more informed decision. At trial, the attorney will ask me questions that enable me to explain the psychological factors that influence eyewitness identification. And yes, the prosecuting attorney will cross-examine me and expose any weaknesses in my testimony. As an expert witness, my goal is not to “win” a case, but rather to educate attorneys, judges, and juries about the psychology of eyewitness identification. I never really know if the defendant is innocent or guilty, and I never give an opinion about whether an identification is accurate (though I have given opinions that lineup procedures are suggestive). Giving an opinion about the accuracy of an eyewitness identification would be considered an “ultimate opinion” and would not be allowed in most courts. These courts are very clear that ultimate opinions can only be made by juries (or judges in a case in which there is no jury). My hope is that my attempt to educate the jury will lead the jury to make a more informed and just decision and that through consciousness-raising in court, I will encourage police to use better lineup procedures and minimize the risk of mistaken identification.

Being involved in research, teaching, and practice in forensic psychology has been highly rewarding. It has given me the chance to work with intelligent and motivated students and faculty colleagues and help make policing and the criminal justice system more just and effective. As I mentioned above, my career started with course readings and discussions with professors who were excited about psychology and law. I hope that your learning about this field through this textbook, other instructional materials, and discussions with your classmates and professors will inspire you to an equally rewarding career!

Dr. Cutler is Professor and Associate Dean of the Faculty of Social Science and Humanities at the University of Ontario Institute of Technology. He previously taught in the Department of Psychology at Florida International University and the University of North Carolina at Charlotte. He is also a Past President of the American Psychology-Law Society, Division 41 of the American Psychological Association. He continues to teach and conduct research on psychology and law topics.